

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**December 17, 2014**

Diane M. Fremgen  
Clerk of Court of Appeals

**NOTICE**

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

**Appeal No. 2014AP1536**

**Cir. Ct. No. 2013SC5434**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT II**

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**LEONA SMITH AND LARRY SCRUGGS,**

**PLAINTIFFS-APPELLANTS,**

**V.**

**TIMOTHY PATTI,**

**DEFENDANT-RESPONDENT.**

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APPEAL from an order of the circuit court for Waukesha County:  
LEE S. DREYFUS, JR., Judge. *Affirmed.*

¶1 NEUBAUER, P.J.<sup>1</sup> Leona Smith and Larry Scruggs (collectively referred to as Smith) appeal the dismissal of their small claims action against

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<sup>1</sup> This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(a) (2011-12). All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

Timothy Patti. The circuit court did not err in determining that Smith did not timely request de novo review of the court commissioner's decision. Therefore, we affirm the circuit court's denial of de novo review.

¶2 Smith sued Patti for \$5000 for alleged injuries resulting from a car accident. Smith did not respond to Patti's discovery requests. Patti filed a motion to compel, which was heard on March 10, 2014. Despite notice, Smith did not appear at the hearing, and the court commissioner dismissed his case without prejudice by order dated March 12, 2014. The order indicates it was mailed and it was filed on March 13, 2014. On April 24, 2014, Smith requested de novo review of the dismissal order. In an order dated May 12, 2014, and filed May 13, 2014, the circuit court denied this request without hearing as untimely. There is no notice of entry of judgment in the record. Smith filed his notice of appeal on July 3, 2014.

¶3 The appeal to this court is from the order of the circuit court, not from the court commissioner's decision. *See Dane Cnty. v. C.M.B.*, 165 Wis. 2d 703, 708, 478 N.W.2d 385 (1992); *State v. Trongeau*, 135 Wis. 2d 188, 191-94, 400 N.W.2d 12 (Ct. App. 1986). Absent a notice of entry, Smith had ninety days, starting May 13, 2014, in which to file his notice of appeal. WIS. STAT. § 808.04(1) (an appeal to the court of appeals must be initiated within forty-five days of the entry of final judgment if written notice of the entry of judgment is given, or within ninety days if notice is not given). Smith filed on July 3, 2014. The appeal to this court of the circuit court's order is timely, and we have jurisdiction.

¶4 We review the circuit court's denial of Smith's request for de novo review of the court commissioner's decision. *See C.M.B.*, 165 Wis. 2d at 708;

*Trongeau*, 135 Wis. 2d at 191-94. The circuit court denied Smith’s request as untimely. The court commissioner dismissed Smith’s case on March 12, 2014. The dismissal indicates it was mailed to the parties and was filed on March 13, 2014. Under WIS. STAT. § 799.207(2)(b), “[e]ither party may file a demand for trial within 10 days from the date of an oral decision or 15 days from the date of mailing of a written decision to prevent the entry of the judgment.” Smith filed his request for a new trial on April 24, 2014, over a month after the dismissal.<sup>2</sup> The circuit court did not err in denying Smith’s request for de novo review.

*By the Court.*—Order affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)4.

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<sup>2</sup> The form document Smith filed to request de novo review indicated on its face that the request must be made within ten days of an oral decision or fifteen days of mailing of a written decision.

